

**REMARKS**

The Office Action of June 18, 2009, has been reviewed and the Examiner's comments carefully considered. New claims 30-36 have been presented by way of this Amendment, claims 1-6 and 10 being previously cancelled. No other changes to the claims have been presented by way of this Amendment. Accordingly, claims 7-9 and 11-36 are currently pending in this application, and claims 7, 16, and 25 are in independent form. Support for the amendments made herein can be found in Figs. 1-11 and page 3, line 3 to page 5, line 5 of the specification. Applicant respectfully submits that no new matter is being presented by way of this Amendment.

Applicant would like to thank the Examiners Smith and King for discussing the current application and the Office Action with Applicant's Attorney during a telephonic interview on August 26, 2009. New claims 30-36 have been presented in consideration of the comments and suggestions of Examiners Smith and King.

Claims 7-9 and 11-29 stand rejected under 35 U.S.C. §102(b) for anticipation by U.S. Patent No. 3,864,882 to Lasscock. In view of the following remarks, reconsideration and withdrawal of this rejection are respectfully requested.

Independent claims 7, 16, and 25 recite that a gutter extends in a first longitudinal direction, that a mounting device comprises an elongated device body that extends in a second longitudinal direction, that the gutter retaining clips are spaced apart from one another in the second longitudinal direction, and that the mounting device is configured such that the first and second longitudinal directions are substantially parallel to each other when the gutter is retained to the mounting device.

Applicant respectfully submits that Lasscock does not teach or suggest all of the claimed limitations of independent claims 7, 16, and 25.

Lasscock teaches gutter suspension means comprised of a plurality of discrete clips (20) for attaching a gutter (35) to a fascia (10). Each clip (20) includes a front portion (21) having a plurality of tongues (22) arranged in staggered columns punched upwardly and rearwardly from the front portion (21) of the clip (20). Each clip (20) also includes a rearwardly extending portion (27) and a downwardly extending rear portion (28) that fit over the top of the fascia (10) so as to mount the clip (20) over the fascia (10). A recess is formed between the front portion (21) of the clip (20) and a front face panel (11) of the fascia (10) to receive a rear wall (36) of the gutter (35). The tongues (22) engage a longitudinally extending retention rib (37) on the rear wall (36) of the gutter (35), such that the gutter (35) can be snapped into place. Successive sections of gutter (35) can be snapped into position by progressively lower tongues (22) so as to give the gutters (35) a downward slope towards a water collection area. Please note Figs. 1 and 2; column 2, lines 46-53; and column 3, lines 1-51 of Lasscock.

In contrast to the claimed invention, Lasscock teaches that the gutter (44) is attached to the fascia (10) of a building by a plurality of discrete individual clips (20), which are separately fastened to the top of the fascia (10). Each clip (20) includes a plurality of tongues (22) that are disposed in adjacent columns that extend vertically, i.e., transverse to the longitudinal direction of the clip (20) when the gutter (35) is retained to the clip (20), such that a fall is provided to the gutter (35) by engaging the gutter (35) with progressively lower tongues (22) of multiple clips (20). As such, the tongues (22) taught by Lasscock are spaced apart vertically and not in the second longitudinal direction, as is claimed in claims 7, 16, and 25.

With regard to the interpretation of the term "elongated" set forth in the Office Action, Applicant respectfully submits that claim terminology must be interpreted in accordance with its plain meaning. MPEP §2111.01(I). Use of the term "elongated" throughout the Specification and in claims 7, 16, and 25 is in keeping with the plain meaning of the term, which means "Having more length than width; slender." "elongated." *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. 17 Dec. 2009. <Dictionary.com <http://dictionary.reference.com/browse/elongated>>. Therefore, the term

“elongated,” as used in claims 7, 16, and 25, denotes that the device body (12) is a long, slender structure with a length several times its width.

Applicant respectfully submits that the clip (20) is not elongated in keeping with the plain meaning of the term. Rather, each clip (20) has a short length only sufficient to accommodate the adjacent vertical rows of tongues and does not extend for a significant length as compared to its width.

Applicant submits that independent claims 7, 16, and 25 are allowable for at least the foregoing reasons, as the prior art of record, including Lasscock, fails to teach or suggest all of the limitations of these claims.

Claims 8-15, 27, 30, and 31 are dependent upon and add further limitations to independent claim 7. Claims 17-24, 28, 32, 33, and 36 are dependent upon and add further limitations to independent claim 16. Claims 26, 29, 34, and 35 are dependent upon and add further limitations to independent claim 25. These claims are allowable for at least the same reasons discussed above in connection with claims 7, 16, and 25.

Further, with respect to claims 13 and 22, these claims recite that “the retaining clips are aligned so as to correspond to an angle of a fall at an angle with respect to a single edge of the mounting device corresponding to an angle of a fall required when the gutter is in the installed position.” Claim 25 also recites that “the clips are aligned so as to correspond to an angle of a fall required when the gutter is in an installed position.” Applicant submits that Lasscock does not teach or suggest this claimed subject matter as well. As previously discussed, Lasscock teaches a plurality of individual clips (20) having adjacent vertical columns of tongues (22). The tongues (22) are vertically spaced in such a manner that the rib (37) of the gutter (35) engages a lower tongue (22) in each successive clip (20) so as to mount the gutter (35) with the required angle of fall. The tongues (22) in each clip (20) are, therefore, not aligned to correspond to the required angle of fall, as is claimed in claims 13, 22, and 25.

According to the Office Action, when the mounting device of Lasscock is placed on the gutter and the retaining clips are engaged with the gutter, the clips are positioned at the same angle as that of the gutter. Applicant respectfully disagrees. Applicant notes that the mounting clip (20) of Lasscock is attached to the building fascia (10), as shown in FIGS. 1 and 2 of Lasscock, and is not placed on the gutter (35). Rather, the gutter (35) is retained by the clips (20). Accordingly, the position of the clips (20) is fixed by their attachment to the fascia (10) and not by the position of the gutter (35). The angle of the fall of the gutter (35) is defined by a spaced relationship of multiple clips (20) with the gutter (35) engaging a progressively lower tongue (22) in successive clips (20). The tongues (22) in an individual clip (20) are not aligned at an angle of the fall of the gutter (35), but instead are vertically spaced so that multiple clips (20) are used to align the gutter (35) at the appropriate fall angle. Applicant submits that claims 13, 22, and 25 are allowable for these reasons, in addition to the reasons previously discussed with respect to claims 7, 16, and 25.

With respect to claims 27 and 28, these claims recite that “at least two retaining clips of the mounting device are aligned, such that the at least two retaining clips are able to simultaneously engage the gutter to retain the gutter to the mounting device.” Claim 29 recites that “at least two retaining clips of the mounting device are aligned, engage the gutter, and the step of attaching the mounting device to the building further comprises mounting the gutter to the mounting device such that at least two retaining clips simultaneously engage the gutter.” Lasscock teaches that the tongues (22) of each clip (20) are spaced vertically. The tongues (22) within each clip (20) are, therefore, not aligned such that they can simultaneously engage the gutter to retain the gutter to the mounting device with the second longitudinal direction of the elongated device body being substantially parallel to the first longitudinal direction of the gutter, as is claimed in claims 27-29.

Moreover, Applicant submits that “a functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. A functional limitation is

often used in association with an element . . . to define a particular capability or purpose that is served by the recited element.” MPEP §2173.05(g). Applicant acknowledges that at least two tongues (22) could engage the gutter (35) simultaneously. Applicant notes, however, that in order for this to happen, the gutter (35) would have to be very steeply angled with respect to the top flange (12) of the fascia (10) to which the gutter (35) is mounted by the mounting clips (20) taught by Lasscock. As such, an individual mounting clip (20) is not capable of retaining the gutter (35) such that the longitudinal direction of the gutter (35) is substantially parallel to the longitudinal direction of a mounting clip (20) when the gutter (35) is retained to the mounting clip (20).

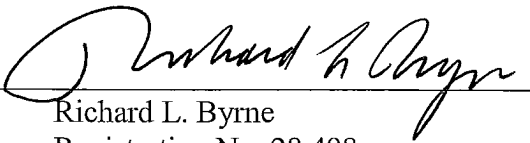
Furthermore, Applicant notes that claim 29 recites a method step that requires simultaneous engagement of at least two retaining clips with the gutter. Claim 36 specifies simultaneous engagement of the at least two retaining clips with the gutter, the substantially parallel relationship between the longitudinal directions of the gutter and the elongated body, and alignment of the retaining clips at the angle of the fall.

Applicant submits that claims 27-29 and 36 are allowable for these reasons in addition to the reasons previously discussed with respect to claims 7, 16, and 25.

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Based on the foregoing amendments and remarks, reconsideration of the rejections and allowance of pending claims 7-9 and 11-36 are respectfully requested.

Respectfully submitted,  
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